

Preamble

The Northern Circuit Rules of Practice (at times referred to as the NCRs) supplement the Uniform Rules of Practice before the Navy-Marine Corps Courts-Martial (*see* NAVMARTRIJUDACTINST 5813.4 (series)) and govern all courts-martial convened in the Northern Judicial Circuit. These NCRs are promulgated by the Circuit Military Judge for the Northern Judicial Circuit under Rule for Courts-Martial 108 and 801(b) and pursuant to the authority delegated in the Uniform Rules. They are designed to promote a common understanding of the procedure for the practice of military criminal law in courts-martial within the Northern Judicial Circuit. These rules are effective 31 August 2012. All previously published rules are hereby cancelled.

Rule 1: Applicability

Rule 1.1: These Uniform rules apply to the trial of all general and special courts-martial in which the accused is a member of the naval service. Counsel, as officers of the court, court reporters, clerks of court, and bailiffs are required to follow these and any local rules.

NCR 1.1: These NCRs apply to all Navy-Marine Corps courts-martial tried under the cognizance of the Circuit Military Judge of the Northern Judicial Circuit.

Rule 1.2: All parties to the court-martial must comply with these Uniform Rules. In the case of noncompliance with these rules or local rules, or orders of the court, the military judge may, as appropriate, issue an admonishment on the record, issue appropriate court orders, issue a report to a military counsel's commanding officer or officer-in-charge, or forward information about the matter to a civilian or military counsel's bar. In addition, the court may forward a complaint for processing in accordance with R.C.M. 109, proceed with action for contempt under R.C.M. 809 and Article 48 of the Uniform Code of Military Justice, or fashion any other appropriate remedy.

NCR 1.2: All counsel practicing before a court in this circuit will familiarize themselves with both the Uniform Rules of Practice before the Navy-Marine Corps Courts-Martial and these NCRs. Counsel must certify to the court at their first appearance that they have read and will comply with both sets of rules.

Rule 2: Purpose

Rule 2: These Uniform Rules are intended to facilitate the orderly administration of military justice.

NCR 2.1: These NCRs are intended to facilitate the orderly and just disposition of courts-martial and to provide for more efficient application of judicial and legal resources throughout the circuit.

Rule 3: Construction

Rule 3.1: These Uniform Rules will be construed to ensure simplicity, fairness, and efficiency in the timely disposition of courts-martial.

NCR 3.1: a. Throughout these NCRs the following definitions will apply:

(1) "Filing" of a pleading, notice, or document with the court means that a true and complete copy of the pleading, notice, or document in question is delivered to the detailed military judge and clerk of court. Counsel are cautioned that a detailed military judge in any given court-martial may not be stationed where a court-martial was convened or the *situs* of trial. Detailed counsel and detailed military judges may be separated by substantial time and distance. Counsel should plan and coordinate accordingly. Counsel are responsible for ensuring that the detailed military judge receives filings in a timely manner via an approved means as described within these *Circuit Rules*.

(2) "Service" upon opposing counsel means that a true and complete copy of a filed pleading or document is delivered to opposing counsel.

(3) "Notice" is established when the transmitting attorney establishes that the receiving attorney has, in fact, received the pleading, document, or information transmitted. For the purpose of this definition, "receiving attorney" means the lead counsel in the case, whether military or civilian. If the lead counsel is unavailable, however, notice is deemed to be established by the receipt of the pleading, document, or information by any counsel detailed to the case or assigned as individual military counsel.

(4) "Timeliness" of filing, service and notice vis-à-vis time zones shall be determined by the detailed military judge as required and when appropriate in any particular case.

b. Original documents. All original documents should be retained and physically entered into the record of trial at the next session of the court-martial in question. Counsel are solely responsible for ensuring the cognizant Clerk of Court or detailed court reporter is served with all original documents.

c. Method of filing, service, and notice:

- (1) Physical service: Proof of physical delivery to the judge or attorney in question will establish filing, service, and/or notice as appropriate.
- (2) Electronic transmissions: In lieu of physical delivery, each filing or matter to be served may be transmitted electronically to the military judge or counsel concerned. Proof that an electronic document was received and opened by the receiving military judge or receiving counsel will constitute proof of filing or service of the document in question, and will constitute proof of notice as to that document, except as to any portion of the pleading or document that was not transmitted electronically. Electronic transmission and receipt will constitute filing and service, and can be substituted for physical service to the extent that the electronic filing or matter to be served corresponds to the original of the filing or matter to be served. Originals will be entered into the record of trial at the next session of the court-martial.
- (3) Fax transmissions: Fax transmissions cannot be assumed to be delivered to the judge or counsel in question. In order to satisfy filing, service, and/or notice requirements for faxed documents, the transmitting attorney must verify by voice or other means that the addressee did in fact receive the faxed document.

Rule 3.2: If any rule herein conflicts with case law, statute, the Manual for Courts-Martial, any constitutional provision, or any service regulation, then that rule must be read in accordance with the law.

NCR 3.2: Failure to comply with these NCRs does not provide any rights or remedies to the accused and the rules will be applied and interpreted in that light.

NCR 3.3: Consistent with law and ethical standards, the detailed military judge may modify or suspend any of these NCRs when required by the facts of a case or in the interests of justice.

Rule 4: Referred Charges

Rule 4.1: After the referral of charges, the trial counsel will provide the responsible judicial circuit with a copy of those charges, along with the appropriate convening order, as soon as possible.

NCR 4.1.a: After referral of charges, trial counsel will provide the Clerk of Court with a copy of those charges, along with the applicable convening order, as soon as possible, but not later than seven calendar days after referral.

NCR 4.1.b: Defense counsel will examine the personal data on the charge sheet, determine its accuracy, and notify the trial counsel and the military judge of any necessary corrections, additions, or deletions as soon after service of the charges as possible.

NCR 4.1.c: All authorized changes to the charge sheet must be initialed and dated by the trial counsel or other representative of the convening authority. See R.C.M. 603.

Rule 4.2: Trial counsel must immediately notify the Clerk of Court and the assigned military judge if referred charges have been withdrawn.

NCR 4.2: Trial counsel and defense counsel shall make every effort to inform the detailed military judge of plea bargain specifics (i.e., only Part I of the Pretrial Agreement) at the earliest time practical following conclusion of negotiations and acceptance by counsel, the accused and the convening authority.

NCR 4.3: Trial counsel will notify the detailed military judge and defense counsel at least three days before trial of any charges or specifications on which evidence will not be presented.

NCR 4.4: The Circuit Military Judge, Northern Judicial Circuit is responsible for detailing all military judges to all Navy-Marine Corps courts-martial within the Northern Judicial Circuit except for those cases that fall within the purview of the Chief Judge, Navy-Marine Corps Trial Judiciary. Cases involving National Security, as defined in the Manual of the Judge Advocate General, JAGINST 5800.7D (series) shall be detailed by the Chief Trial Judge in accordance with NAVMARTRIJUDICINST 5500.2 (series). Government counsel will ensure that the Circuit Military Judge is immediately advised of the existence of all such cases. Notice shall include the name of the accused, the convening authority, and the allegations. Cases likely to generate press interest or are otherwise potentially high visibility cases shall also be brought to the Circuit Military Judge's attention as soon as practicable following referral.

Rule 5: Civilian Counsel

Rule 5.1: If an accused retains civilian counsel, detailed defense counsel must furnish civilian counsel with a copy of all pertinent rules of court. Prior to appearing in Court, civilian counsel must cause to be served on the clerk of court a written notice of appearance. This notice will be in the form of a pleading and must contain the following: name of the accused, counsel's name, office address, telephone numbers, and jurisdiction(s) where the counsel is presently admitted to practice. The filing of any pleading relative to a case that contains the signature of counsel constitutes notice of appearance of such counsel.

NCR 5.1: If an accused retains civilian counsel, detailed defense counsel must furnish civilian counsel with a copy of these NCRs as well as the Uniform Rules. Civilian counsel will cause to be served on the Clerk of Court a written notice of appearance, attachment 1. Detailed defense counsel will promptly provide a copy of the notice of appearance to the trial counsel and court reporter prior to the first session of court. The notice must be in the form of a pleading and must contain the following: Name of the accused, counsel's name, office address, telephone/fax numbers, and electronic mail address; and jurisdiction(s) where the counsel is presently admitted to practice and in good standing. Additionally, the notice must acknowledge familiarity with these rules.

Rule 5.2: Detailed defense counsel must inform the civilian counsel of the rules of Professional Conduct of Attorneys Practicing Under The Cognizance and Supervision of the Judge Advocate General (JAGINST 5803.3 series).

Rule 5.3: Once civilian counsel notifies the clerk of court or the military judge of representation of the accused on the referred charges he or she may not withdraw from such representation, without the permission of the military judge.

Rule 6: Northern Circuit Docketing Procedures

Rule 6.1: The circuit judge of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must contain features that ensure positive control over the docketing and processing of courts-martial.

NCR 6.1: Every week, each Military Justice Officer, Senior Trial Counsel, or other designated person is required to submit a Docketing Memorandum to the Clerk of Court, *in writing, no later than 1200 on Wednesday*. If not received by 1200 on Wednesday, the requested cases may be left off that week's revised docket. The Docketing Memorandum may be submitted via facsimile or electronic mail. The Circuit Military Judge may designate an alternate date and time for submission to accommodate weeks during which holidays are observed. The Docketing Memorandum must be in the format provided in attachment 2, and will list all cases which are to be included on the published docket. *If no cases are to be docketed, a negative submission is required.* The Northern Judicial Circuit Docket is a single document for all scheduled cases; however, cases which are docketed for anytime after the upcoming week are considered to be on the long-range docket. The short-range docket (upcoming week) will ordinarily indicate for each case the starting time, courtroom (WNY/GL/QUAN/GROT), and the initials of the detailed military judge.

NCR 6.2: The Docketing Memorandum consists of four parts. Part One addresses cases to be docketed for the upcoming week, Part Two addresses cases to be docketed on the long-range docket, Part Three addresses any requested additions to the docket, and Part Four addresses any

requested deletions to the docket and any logistical concerns (for example, if counsel are requesting a specific time of day due to witness availability).

NCR 6.3: Part One of the Docketing Memorandum must include all cases that are to have any sessions during the upcoming week. This includes cases which are being brought before the circuit for the first time, cases in which either counsel is requesting a session, and cases in which a session has been judicially scheduled by a military judge at a previous session.

NCR 6.4: Part Two of the Docketing Memorandum must include all cases that should be included on the long-range docket. Normally, Part Two reflects cases that have previously been docketed pursuant to previous court order, or through the use of a motion for docketing.

NCR 6.5: Part Three of the Docketing Memorandum must include any requested additions to the docket. All requested additions to the docket must be justified, and ordinarily require supporting documentation. A motion for continuance, a copy of part one of a signed PTA, and a certificate of withdrawal are all examples of appropriate supporting documentation.

NCR 6.6: Part Four of the Docketing Memorandum must include any requested deletions to the docket. All requested deletions to the docket must be justified, and ordinarily require supporting documentation. A motion for continuance, a copy of part one of a signed PTA, and a certificate of withdrawal are all examples of appropriate supporting documentation.

NCR 6.7.a: Only cases with referred charges will be entered on the docket. In order to enter a case on the docket for the upcoming week, trial counsel will submit, via the Military Justice Officer or Senior Trial Counsel a completed Motion for Docketing (MFD), attachment 3 and a completed Pretrial Information Report (PTIR), attachment 4.

NCR 6.7.b: The PTIR serves to prepare the military judge for each session of court. In the initial PTIR, trial counsel must include copies of any military orders or directives alleged to have been violated, and copies of any federal or state statutes alleged to have been violated and applicable sections of the statutes pertaining to the maximum punishments. Prior to trial on the merits or guilty pleas, trial and defense counsel must each include proposed elements for any federal or state statutes alleged to have been violated, together with all applicable definitions.

NCR 6.8: Counsel should also include in Part 2 of the PTIR any special circumstances or requests that are specific to the next session of court, including start time, witness availability, significant logistical issues, and a justification if the trial deadlines exceed 60 days from the arraignment date.

NCR 6.9: Trial counsel and defense counsel both must sign the PTIR. However, its submission should not be delayed for the lack of a signature. Accordingly, provided counsel have communicated with one another regarding the contents of the PTIR, one counsel may sign for the other with an explanation for the missing signature in Part 2. This will serve to verify to the court that the non-signing counsel is aware of the contents and has authorized the other to sign on his or her behalf.

NCR 6.10: If a previously scheduled session of court no longer appears to be necessary, a PTIR is still required. The reason for requesting to cancel the session should be explained in part 2 of the PTIR. As an example, if an Article 39(a) session was scheduled to litigate motions, and no motions have been filed, counsel still must submit a PTIR for that session, but may indicate in the PTIR that neither party desires a session. Unless all charges have been withdrawn in writing, only the military judge has the authority to cancel or move any session of court.

NCR 6.11.a: In order to docket a case for anytime other than the upcoming week (or within 7 days), counsel must submit an MFD. A PTIR is not required at that time, but must be submitted the week prior to the first scheduled session.

NCR 6.11.b: A proposed pretrial order, attachment 5, is REQUIRED to be filled out and attached to every MFD. Notice of any substantive changes to the contents of attachment 5 must be affirmatively given to the opposing party and the court.

NCR 6.12: The accused, via Defense counsel, must enter forum and pleas on the date established by the court. Such entry must be either orally on the record, or in writing by use of attachment 6. If in writing, they will be entered on the record at the next session of court.

NCR 6.13: Counsel shall submit pretrial documentation addressing preliminary matters (commonly referred to by the applicable page number of the Navy-Marine Corps Trial Judiciary Trial Guide) in accordance with the court-established deadlines. Counsel who fails to submit such documents in a timely manner may, in the discretion of the military judge, forfeit the opportunity to conduct general voir dire of the members.

NCR 6.14: Each week, the Circuit Military Judge publishes the docket pursuant to the OJAG standard operating procedures. The Clerk of Court will be the circuit's primary point of contact for all docketing issues. The Clerk of Court is the administrative assistant to the Circuit Military Judge, Northern Judicial Circuit. The Clerk of Court is responsible for all administrative functions associated with the circuit and will be treated with the respect due the court when handling such matters, regardless of his/her rank.

NCR 6.15: The Circuit Military Judge or Clerk will normally publish the docket by the close of business on the day following the due date of the Docketing Memorandum, which will normally be on Thursday of each week. The docket is published through OJAG and distributed by the Clerk of Court to the field. Each Military Justice Officer, Senior Trial Counsel, Senior Defense Counsel, or other officer receiving the docket is responsible to ensure that the docket is distributed to all parties concerned with the scheduling of cases, including the court reporters. *It is the responsibility of each counsel to be aware of each week's published docket.*

NCR 6.16: Trial deadlines established at an Article 39(a) arraignment session, or by the use of a Motion for Docketing, are not optional. Counsel will adhere to the deadlines and may be called upon to address, on the record, any failure to abide by them.

NCR 6.17: If a case is withdrawn, documentation of such withdrawal must be submitted to the court. Proper documentation includes a withdrawal letter signed by the convening authority, a

certification of withdrawal such as that in attachment 7, or a copy of the charge sheet reflecting the withdrawal action. Cases will not be removed from the docket, and counsel will be expected to appear as scheduled, until such written notification of withdrawal is received by the court.

Rule 7 PII:

Rule 7.1: Use of Personally Identifying Information (PII) must be eliminated or minimized to the maximum extent possible in all pleadings and in all court documents.

Rule 7.2: PII must be redacted in all documents, pleadings, discovery, etc. that are electronically transmitted. Unless encrypted, medical and psychiatric records must never be electronically transferred.

Rule 7.3: PII and the names of all alleged victim(s), must be minimized to the maximum extent possible in all pleadings. With the exception of the charge sheet, and during court proceedings, all alleged victim(s), will only be identified by their initials, and rank if a service-member.

NCR 7: The first and last initials in capital letters will be used when identifying victims in pleadings. Where initials are duplicative the middle initial will be used for both parties.

Rule 8: Conferences & Ex Parte Communications With The Military Judge

Rule 8.1: Conferences between the military judge and trial and defense counsel are authorized by R.C.M. 802. The presence of the accused is neither required nor prohibited. Such conferences will not be used to litigate or decide contested issues. The military judge must summarize all R.C.M. 802 conferences for the record at the next 39(a) session of court.

NCR 8: In contested cases, counsel may seek, and the military judge will normally schedule, a trial management R.C.M. 802 conference approximately one week prior to trial on the merits.

Rule 8.2: *Ex parte* communications with a military judge concerning a case that is pending before that military judge are prohibited, except for routine administrative matters or as provided by law.

Rule 8.3: Routine administrative matters include, but are not limited to, docketing and logistic matters (e.g. pleas, forum, and number of, or difficulty with,

witnesses that affect the time, location, and length of court sessions).

Rule 8.4: Military judges may, at their discretion, conduct critiques or offer suggestions regarding counsels' performance in courts-martial to improve the administration of justice. At the discretion of the military judge, these sessions may be conducted *ex parte*, or jointly.

Rule 9: Discovery

Rule 9.1: Counsel will promptly comply with military law regarding discovery. Counsel must not make a frivolous discovery request or fail to make a diligent effort to comply with a legal and proper discovery request by an opposing party.

NCR 9.1: Discovery issues must be resolved expeditiously. Counsel will acknowledge and respond to discovery requests in a timely fashion, normally within five working days. When counsel are not able to respond fully to a discovery request within five working days, counsel will acknowledge the request and discover what is available and give notice of when remaining material is expected to become available. To prevent discovery issues from unnecessarily delaying trial, the military judge, at arraignment, may require both counsel to state on the record their compliance with discovery requirements.

Rule 9.2: Notwithstanding "open discovery" in the military, discovery requests should be as specific as possible to avoid misunderstanding and to assist in quickly obtaining the desired information.

NCR 9.2: Gamesmanship in the discovery process will not be tolerated. Discovery requests should be answered promptly in writing. All counsel are expected to adhere to the spirit of military discovery practice and shall promptly turn over all discoverable materials, including the identity of witnesses. In the normal case, the Court will not set discovery deadlines, but will instead rely upon the parties to either work together or bring unresolved discovery issues to the Court's attention as soon as they are ripe.

NCR 9.3: Upon notice to opposing counsel, a party may request an *in camera* review of potentially discoverable material from the Court at any time.

Rule 10: Motions

Rule 10.1: As early as possible, counsel will advise the military judge and opposing counsel of the general nature of any motions, along with applicable citations.

Rule 10.2: When necessary and not otherwise prohibited by the military judge, motions and other documents may be filed with the court and served on opposing counsel by facsimile (fax) or electronic transmission. Transmitting counsel will ensure that such documents are actually received. Moreover, whenever a facsimile or electronic mail transmission is used to communicate with the court or with opposing counsel, the original document or copy, as appropriate, will be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

Rule 10.3.A: Motions

- 10.3.A.1:** Each motion must include or be accompanied by a statement of the specific points of law and authority that support the motion, including, where appropriate, a concise statement of facts, which party bears the burden of production and persuasion, and whether oral argument is requested.
- 10.3.A.2:** Within 7 days of the date of service or at such other time as the Court may direct, the opposing counsel must serve and file a memorandum of points and authorities in opposition to the motion. If such a response is not filed within the prescribed time, the Court may treat the motion as conceded.
- 10.3.A.3:** Each motion that requires an order must be accompanied by a proposed order.
- 10.3.A.4:** Within 5 days after service of the motion in Opposition, or at such other time as the Court may Direct, the moving party may serve and file a response.

NCR 10.1: Motions must be submitted in accordance with the trial deadlines established by the military judge at the arraignment or as set out in an approved motion for docketing. If no such deadlines have been previously established in a case, counsel will submit motions 10 days prior, and responses 7 days prior, to the pretrial Article 39(a) session. All motions and responses must be filed in the format contained in attachment 8 and contain the following information:

- (1) A statement of the nature of the motion;
- (2) A summary of the facts supporting the motion;

(3) A brief discussion of the points of law supporting the motion, including citation of authority as well as argument and conclusions;

(4) A statement of any evidence to be offered in support of the motion, (e.g., a description or copy of real evidence including photographs, names of witnesses, summaries of expected testimony, etc), a statement of which party bears the burden of production and persuasion, and a request, if any, for the production of a witness for an Article 39(a) motion session;

(5) A statement of the relief requested, including drafts of any proposed orders; and

(6) A statement whether oral argument is desired.

NCR 10.2: Answers to motions will comply with the same requirements as motions, except they will be filed with the detailed military judge as soon as possible or as directed by pretrial order.

NCR 10.3: Counsel will prepare proposed findings of fact and conclusions of law to accompany each motion, unless otherwise directed by court order. Proposed findings of fact and conclusions of law must be submitted and timely filed with each motion and response, thereto.

Rule 10.4: When essential findings are required on a motion, the military judge must enter those findings on the record contemporaneously with the ruling.

NCR 10.4: If the motion involves only a dispute between the parties as to the law or an ultimate question of fact, and does not involve the underlying facts, counsel should endeavor to enter into, and prepare, prior to trial, stipulations of fact or of testimony covering those matters.

Rule 10.5: If the military judge rules adversely to the government on a significant matter, and the government is contemplating an appeal, the military judge must state on the record the time of the ruling, the time the 72-hour period will run, and how and where the government may provide the military judge with written notice of appeal.

NCR 10.5: If cases will be cited in the course of argument before the detailed military judge, a list of cases, not already cited in counsel's brief, will be delivered to the military judge and opposing counsel prior to argument.

Rule 10.6: Unless good cause is shown, no motions will be considered on the day of trial.

NCR 10.6: It is the responsibility of counsel to ensure prompt delivery of all motions and/or responses as well as all supporting documents by the appropriate filing date and to confirm receipt by the judiciary.

Rule 11: Continuances

Rule 11.1: Continuance requests must be made by written motion outside of court or, if presented during an Article 39(a) session, they may be oral. The motion must state the specific reason for the request and the earliest possible trial date. Counsel must be prepared to fully justify each continuance request.

Rule 11.2: All motions to continue must include the number of previous continuances and who sought the continuances, whether opposing counsel consents, the trial date, and dates counsel and witnesses are available for trial. The proposed order must contain language for both granting and denying the motion, a box to check if the motion is granted or denied, and a place for the new trial date. If the motion is made after the last Article 39a session before trial, the motion will not be granted except under extraordinary circumstances where there is no alternative means of preventing a substantial injustice.

NCR 11.1a: In cases where a Reserve Military Judge has been detailed, all continuance requests will be submitted to both the Circuit Military Judge and the detailed Reserve Military Judge. Absent specific delegation to the Reserve Military Judge the Circuit Military Judge will rule on the continuance requests.

NCR 11.1b: Counsel do not set trial dates. The detailed military judge has sole responsibility to set or change trial dates. *See* Rule 6. If a continuance is requested and both counsel agree to the requested delay, the detailed military judge may grant the request without an Article 39(a) session or R.C.M. 802 conference in his or her sole discretion.

Rule 11.3: If the accused is in pretrial confinement, defense motions for continuances and concurrences in government motions for continuances must be signed by the accused and defense counsel.

Rule 12: Situs

Rule 12: Subject to R.C.M. 504(d)(1), the military judge

shall designate the situs of the trial.

Rule 13: Courtroom Security

Rule 13.1: The presiding military judge may prescribe rules in any case to establish courtroom security as necessary.

NCR 13.1: Local courtroom security in the Northern Circuit is generally governed by separate instructions applicable in each of the geographic regions/installations covered by the circuit.

Rule 13.2: The government is responsible for ensuring that the courtroom facility is in compliance with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel must inform the military judge whenever they believe extra precautions and/or security measures should be implemented.

NCR 13.2: In any case where the detailed military judge determines a security problem exists, or where a high security risk or potential risk is present, the trial counsel will ensure a courtroom security officer is appointed and a courtroom security plan is developed. The detailed military judge may delay the trial until satisfied that the court-martial may proceed in a safe manner.

Rule 13.3: The circuit judge will annually review the security plan with the courtroom facilities within the circuit with the government representative responsible for courtroom security at each installation.

Rule 13.4: The wearing or carrying of weapons in the courtroom is prohibited, except when authorized by the detailed military judge.

NCR 13.3: If firearms are to be marked as exhibits, trial counsel will personally ensure that the firearms have been cleared before they are brought in the courtroom and cannot be fired.

Rule 14: Uniforms

Rule 14.1: The military judge will designate the proper uniform and civilian attire to be worn by all persons required to be present. However, when court is convened in a courtroom facility or non-operational setting, all parties, counsel, and the court will appear in the Uniform of the Day. Utility uniforms will not be designated as courtroom

uniforms unless the court is convened at sea or in an operational setting.

NCR 14.1.a: The uniform for all sessions of court will be determined by the military judge. *See* R.C.M. 801. In the winter months, the prescribed uniform is service “B” for Marines and Service Dress Blue for Navy (or Service equivalent). In summer months, the prescribed uniform is service “C” for Marines and Summer Whites for Navy (or Service equivalent). Marines may be required to wear Service “A” at the military judge’s discretion. Navy personnel, at the military judge’s discretion may wear the khaki uniform or service uniform. In all cases, when determining which uniform will be worn, the military judge will give careful consideration to the seriousness with which the proceedings are viewed, customs and traditions of the naval service, as well as the potential for publicity.

NCR 14.1.b: Male civilian counsel will wear conservative coat and tie, shirt, and slacks. Female civilian counsel will wear appropriate conservative business clothing.

Rule 14.2: The accused must wear the insignia of grade and may wear any decorations, emblems, or ribbons to which entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused’s commander must render such assistance as may be necessary to ensure proper uniform. When the accused is in pretrial confinement, the Government is responsible for ensuring the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire.

Rule 14.3: Physical restraints will not be imposed on the accused or any witness during open sessions of the court-martial unless prescribed by the military judge. No accused or witness in open court will wear any tag or symbol that identifies them as being in custody.

Rule 15: Spectators

Rule 15.1: The military judge is responsible for the control of court-martial spectators and the courtroom security in general. The military judge may issue such orders as deemed just, to ensure a fair trial.

Rule 15.2: Spectators are encouraged to attend any sessions of the court-martial, unless otherwise determined by the military judge. *See* R.C.M. 806.

NCR 15.2: Spectators may enter or leave the courtroom while the court-martial is in session, provided that their activity is not disruptive to the proceedings.

Rule 15.3: Counsel will ensure that the military judge is advised if there is a likelihood that any spectator is to be called as a witness.

Rule 15.4: Spectators are forbidden to demonstrate agreement or disagreement, either verbally or by non-verbal conduct (e.g. shaking or nodding of head), with testimony or other trial procedures. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising their clients, their witnesses, and friends of the accused and counsel, of the decorum required in the courtroom.

NCR 15.4: Counsel will refrain from conferring with spectators or other non-participants across the bar while the court is in session.

Rule 16: Punctuality and Consideration For Members' Time

Rule 16: Punctuality in all court matters is required of all parties and reflects preparation and professionalism. When a party is unavoidably late, or proceedings will be delayed, the judge will be notified immediately and provided an explanation.

Note: It is better to be 15 minutes early than one minute late.

NCR 16.1: Trial counsel will notify the accused's command of the place, date, and time of trial, that the presence of the accused is required, and that appropriate transportation to the situs of the trial should be arranged. Generally, trial counsel is responsible for ensuring the timely presence of an accused who is in pretrial confinement or other restraint. However, after the accused arrives at the place of trial, defense counsel is responsible for the timely presence of an accused at all required court sessions. Defense counsel is also responsible for the timely presence of an accused that is not in pretrial restraint.

NCR 16.2: When a case is to be tried before a court with members, trial counsel must ensure that the members are notified of the time, place, and uniform for the trial. Reporting times for court members will be scheduled to minimize waiting time for members. Members may be placed on standby or "on call" as deemed necessary by the detailed military judge.

NCR 16.3: Trial counsel in every trial before members will submit a proposed findings worksheet where any plea of "not guilty" has been entered. If there is more than one charge or specification, if lesser-included offenses are in issue, or if findings by exceptions and substitutions can reasonably be made, the worksheet will be tailored to reflect each alternative

finding. If defense counsel disagrees with the worksheet proposed by trial counsel, defense counsel may submit a proposed worksheet.

NCR 16.4: Trial counsel in every trial before members will submit a proposed sentencing worksheet when a finding of "guilty" has been reached. If defense counsel disagrees with the worksheet proposed by trial counsel, defense counsel may submit a proposed worksheet.

Rule 17: Bailiff

Rule 17: If practicable, a bailiff will be present at every court-martial. Trial counsel must ensure bailiffs are provided a copy of attachment (1) and are thoroughly briefed on their duties.

NCR 17.1: A bailiff will be present at every trial with members or as directed by the military judge. Trial counsel will ensure the bailiff is provided a copy of attachment 9 and is thoroughly briefed as to the bailiff's responsibilities.

NCR 17.2: The bailiff will not be a witness. The bailiff will not be the unit escort or guard for the accused. If the detailed military judge excuses the presence of a bailiff, the trial counsel will perform the bailiff's duties.

Rule 18: Guards

Rule 18: When appropriate, a guard or guards will be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum.

NCR 18.1: All issues concerning Guards or Courtroom Security will be resolved by the detailed military judge on a case by case basis.

NCR 18.2: Counsel will immediately notify the detailed military judge of any matters that may affect courtroom security. If matters arise during the course of a trial, counsel will immediately ask for a recess and advise the military judge.

Rule 19: Court Reporters

Rule 19.1: Trial counsel must ensure that the court reporter has been sworn.

Rule 19.2: Each time the court convenes or reconvenes, the reporter will note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.

Rule 19.3: Court reporters must ensure that the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the record of trial.

Rule 19.4: Court reporters will maintain a complete list of all exhibits marked and those admitted.

NCR 19: The trial counsel is responsible for keeping the court reporters apprised of the status of all docketed cases, to include, but not limited to: all anticipated delays; continuances; withdrawal of charges; changes of courtrooms and/or location; changes in the anticipated pleas and forum; and the need for court reporter support in unscheduled hearings.

Rule 20: Entry and Departure of Military Judge

Rule 20: All persons in the courtroom, except the court reporter, without regard to rank or grade, must rise when the military judge enters or leaves the courtroom.

Rule 21: Entry and Departure of Members

Rule 21: All persons, other than the military judge and court reporter, must rise when the members enter and leave the courtroom.

Rule 22: Voir Dire

Rule 22.1: In accordance with R.C.M. 912(d), the military judge determines the procedure for conducting voir dire. Voir dire examination shall be limited to matters relevant to determining whether to remove a member for cause and to determine the member's fairness and impartiality. The military judge shall ensure that the privacy of the prospective members is reasonably protected. All group voir dire questions must be submitted in writing to the judge prior to trial.

NCR 22.1.a: *The military judge determines the procedure for conducting voir dire. See R.C.M. 912(d).* All questions to be asked *en banc* will be submitted for approval in writing on the date designated by the military judge, or in the absence of such date, at least 5 days prior to assembly. Copies of proposed voir dire questions must be served on opposing counsel. Upon specific request, the military judge may permit counsel to ask additional questions.

NCR 22.1.b: The military judge will ordinarily conduct the initial voir dire of the members. Counsel may then be permitted to ask previously approved questions that have not been asked during the initial voir dire by the military judge. All questions must be relevant to determining

the qualifications of the members to sit on the court-martial. Where necessary, and in the discretion of the military judge, counsel may be permitted to question the members individually. However *see* NCR 6.13 for possible sanctions for not submitting proposed voir dire questions to the court in accordance with trial deadlines.

NCR 22.1.c: During voir dire, counsel will not: (1) argue the case; (2) question members concerning anticipated instructions or theories of law, or members' understanding of various legal principles yet to be explained to them; (3) ask members what kind of findings or sentence they might return under a hypothetical set of facts; (4) engage in efforts to establish rapport with members; or (5) seek a pre-commitment from a member to a factual or legal proposition that is in issue.

Rule 22.2: The member's questionnaires shall be phrased and organized so as to facilitate an accurate screening and shall request only that information essential for: (1) determining whether a person meets the Article 25 criteria for eligibility and (2) providing basic background information ordinarily sought during voir dire examination.

NCR 22.2: The trial counsel is responsible for ensuring that all court members complete the Northern Judicial Circuit Court-Martial Members Questionnaire, attachment 10, on the date designated by the military judge, or in the absence of such date, by assembly. A member may desire to retain the original and provide a copy for court use, and then update the copy as necessary for subsequent trials.

Rule 22.3: Before voir dire, counsel will provide the military judge with a joint list of the full name and unit or city and state of residence of all witnesses. The list must include witnesses whose testimony will be presented by stipulation.

NCR 22.3: All challenges, whether peremptory or for cause, must be addressed to the military judge at an Article 39(a) session.

Rule 23: Prohibited Items in Courtroom

Rule 23.1: Eating, chewing gum, or using tobacco products are not permitted in the courtroom. Weapons and objects that may be used as weapons, including potential exhibits, are not permitted in the courtroom without specific authorization of the military judge.

NCR 23.1: Use of tobacco products and eating are not permitted in the courtroom. Leave of court is required to permit drinking in the courtroom of any beverage other than water. All beverages must be consumed from covered containers.

Rule 23.2: Unless specifically authorized by the military judge, and except for the equipment required by the court reporter, NO ELECTRONIC DEVICES CAPABLE OF video and/or audio recording (e.g. LAP TOPS/CELL PHONES/TABLETS/ etc...) are permitted in the courtroom.

Rule 23.3: Cellular or mobile telephones are not permitted in the courtroom unless otherwise permitted by the military judge.

Rule 24: Counsel Decorum

Rule 24.1: Counsels' decorum in the courtroom must be conducive to a dignified judicial atmosphere.

NCR 24.1: Counsel will refrain from undue familiarity between themselves or in relationship to the members, military judge, or witnesses while court is in session and when in the presence of the accused.

Rule 24.2: Counsel will stand when addressing the bench or members and when examining a witness, unless otherwise authorized by the military judge.

NCR 24.2: Counsel will direct all argument and responsive statements to the military judge or members, as applicable, and will avoid colloquy or argument towards the other party, except for perfunctory matters of courtesy.

Rule 24.3: Unless specifically authorized by the military judge, only one counsel per side may question a witness, address the court on a motion or issue, or make opening statements or closing arguments.

NCR 24.3: During sessions of the court, no counsel will leave the courtroom without permission of the military judge.

Rule 25: Counsel Conduct

Rule 25.1: Counsel must not, during trial, state or allude to any matter that counsel has no reasonable basis to believe is relevant to the case or that is not supported by admissible evidence.

Rule 25.2: Counsel must not, during trial, assert any personal knowledge of the facts in issue, except if testifying as a witness.

NCR 25.2: Counsel will not, during trial, assert any personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of an accused; but counsel may argue, based on analysis of the evidence, for any position or conclusion supported by the evidence and any allowable inferences.

Rule 25.3: Counsel, in presenting a matter to the court-martial, must disclose legal authority in the controlling jurisdiction known to counsel to be directly contrary to their position and which is not disclosed by opposing counsel.

NCR 25.3.a: When one counsel is addressing the court or examining a witness, the opposing counsel shall remain seated at the counsel table, unless standing to make an objection.

NCR 25.3.b: Each time the court convenes or reconvenes, the trial counsel will ensure that the military judge is advised of all changes to, or absences of, any parties.

NCR 25.3.c: Counsel will follow along in the trial guide to ensure that the military judge makes no unintentional omissions. Should counsel believe that a military judge has made such an omission, he or she must bring it to the judge's attention immediately upon its discovery.

Rule 26: Witnesses

Rule 26.1: Trial counsel must swear each witness called to testify and will ensure that the military witness' name, grade, and military organization, or civilian witness' name and city and state of residence are announced in court.

NCR 26.1: Live, in-person testimony from witnesses is expected (in the absence of a stipulation of expected testimony) during all phases of the trial. In the event either counsel desires to use an alternative to live, in-person testimony (e.g., telephonic testimony or video teleconferencing), counsel must request permission to do so in advance of the session and note the request on the PTIR. This rule applies equally to testimony on the merits and testimony on sentencing. Nothing in this NCR will be construed to limit or alter the military judge's discretion or responsibilities under M.R.E. 611.

Rule 26.2: Counsel must ensure that their witnesses understand the physical arrangements of the courtroom, where they should go, and how they must conduct themselves.

NCR 26.2.a: Witnesses will be instructed by counsel that they must not chew gum or tobacco, wear dark glasses, or use slang expressions or profanity (except as may be required in the presentation of the facts). Witnesses must be told not to engage court members or the military judge in casual conversation.

NCR 26.2.b: Military witnesses do not salute the military judge, president of the court, or the members.

NCR 26.2.c: Unsworn statements will not be made from the witness stand. They will be made from the counsel table or at another location authorized by the military judge.

Rule 26.3: Counsel must ensure that their witnesses will be immediately available when called to testify.

NCR 26.3.a: Counsel will ensure that their respective witnesses will be immediately available when called to testify. This includes informing the witness of the time, location, and uniform for court, as well as making any arrangements necessary to allow a civilian witness to come aboard the base. The fact that the government has agreed to, or has been ordered to, produce a witness on behalf of the defense, does not relieve the defense counsel of these requirements for defense witnesses. Counsel will coordinate with each other and the military judge to reduce, whenever practicable, the amount of time a witness is required to wait prior to testifying; however, availability is always more important than convenience.

NCR 26.3.b: Witnesses ordinarily will not be present in court during trial. Counsel are responsible for ensuring their witnesses are aware of and comply with this rule. The detailed military judge may permit a witness to remain in the courtroom after the witness has testified, or otherwise, upon a showing of good cause. This rule is not to be construed as limiting M.R.E. 615.

Rule 26.4: Counsel will question witnesses from a reasonable distance. Before approaching the witness, counsel must obtain permission of the military judge. Counsel should not position themselves so as to block the view of the military judge, members, or counsel.

NCR 26.4.a: Witnesses will not be crowded, shouted at, ridiculed, humiliated, or otherwise abused.

NCR 26.4.b: To the greatest extent practicable, trial counsel will ensure that separate waiting areas for government and defense witnesses are provided.

NCR 26.4.c: No later than five business days prior to trial, counsel who intend on using an interpreter will notify the detailed military judge and opposing counsel of the interpreter's identity and provide a brief summary of his/her qualifications. Any anticipated objection to the proposed interpreter will be provided to the detailed military judge as soon as possible but no later than two business days prior to the date of trial.

NCR 26.4.d: Counsel will provide their witnesses with information and assistance concerning the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

Rule 27: Objections

Rule 27: Counsel must succinctly state the nature and basis of an objection. After the military judge rules on an objection, counsel may only make comment or further argument with permission from the military judge.

NCR 27.1: Counsel shall not present argument on an objection without the permission of the military judge. Argument on objections shall be direct and succinct. Citation of specific authority is desirable.

NCR 27.2: An objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 28: Stipulations

Rule 28.1: If a motion, or any other issue, involves only a dispute between the parties as to the law or any ultimate question of fact, and does not involve the underlying facts, counsel will consider entering into stipulations of fact or of testimony covering those matters.

Rule 28.2: Stipulations must be in writing, and will be prepared prior to trial. Oral stipulations, when permitted by the military judge, must be read into the record and agreed to by counsel and the accused.

Rule 28.3: Stipulations may be made for the limited purpose of obtaining a ruling on a motion or other pleading.

Rule 28.4: Written stipulations of fact will be marked as a trial exhibit and, in a members trial, read to the members. Stipulations of fact may be taken into the deliberation room by the members. Written stipulations of expected testimony must be marked as appellate exhibits and, in a members trial, read to the members. Stipulations of testimony may not be taken into the deliberation room.

Rule 29: Offers of Proof

Rule 29.1: When offers of proof are expected to be presented on

motions or objections, counsel should inform opposing counsel and attempt to reach agreement on the content of the offer of proof before presentation.

Rule 29.2: Absent a stipulation, an offer of proof is not evidence upon which a finding of fact may be based.

Rule 30: Judicial Notice

Rule 30: Counsel will advise the military judge and opposing counsel, as soon as possible and preferably before trial, of any intended requests for judicial notice.

NCR 30: Prior to trial, the trial counsel will have marked as appellate exhibits readable copies of all directives, regulations and state or federal statutes alleged to have been violated. Trial counsel will also provide advance copies to the defense counsel and to the military judge. *See NCR 6.1.c.*

Rule 31: Exhibits

Rule 31.1: Prosecution exhibits will be identified by Arabic numerals. Defense exhibits will be identified by capital letters. Appellate exhibits will be identified by Roman numerals.

NCR 31.1.a: In formulating questions to witnesses concerning an exhibit, counsel will refer to the exhibit by its exhibit number or letter.

NCR 31.1.b: Exhibits will be marked by the court reporter, not the counsel, in the anticipated order of presentation before the trial is scheduled to commence or during recesses.

NCR 31.1.c: The proponent of documentary or photographic evidence will arrange to have a copy of the original exhibit on the date of trial for each member of the court as well as a copy for the military judge.

Rule 31.2: If an exhibit is not compatible for inclusion in the record of trial, counsel will prepare an appropriate substitute for inclusion in the record.

Rule 31.3: All audio recordings and video recordings that contain audio portions must be transcribed before trial, by the party offering such a recording, unless authorized by the military judge. If a portion is inaudible, the transcript shall so state. A copy of the transcript will be served on opposing

counsel before trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof will be made available to opposing counsel upon request. The transcript and recording shall be marked as exhibits.

Rule 31.4: For those circuits in which electronic media, or so-called "smart courtroom" technology, is installed, additional rules or protocols may be necessary for the handling and presentation of exhibits. Attachment 2 contains a proposed set of rules that may be used or modified to accomplish the circuit's needs.

NCR 31.2.a: Use of electronic media is encouraged. However, counsel must obtain the express, prior approval of the military judge before using any form of electronic media in any session of court. Counsel using electronic media are directed to Uniform Rule 31.4 and attachment 11 of these rules.

NCR 31.2.b: Any exhibits (including computer generated exhibits or any other exhibits or demonstrative aids prepared prior to trial) or evidence intended for use during argument or opening statement, must first be shown to opposing counsel and then be approved for use by the military judge. Counsel are advised to diligently practice the use of such exhibits, particularly computer generated exhibits, prior to any session of court. Further, counsel must ensure computer-generated exhibits are properly duplicated by hard-copy print-outs for inclusion in the record of trial.

NCR 31.2.c: Counsel intending on using demonstrative aids, such as charts, diagrams, videotapes, audiotapes or any other technological presentations during their opening arguments, closing arguments or cases-in-chief must provide notice to the detailed military judge and opposing counsel no less than two days prior to trial.

Rule 32: VTC REQUIREMENTS

Rule 32.1: Consistent with the Rules for Courts-Martial and applicable DoN instructions, Video Teleconferencing (VTC) may be used to conduct Article 39(a) sessions for arraignments, motions practice and any other administrative sessions.

NCR 32.1.a: Requests for remote testimony over the objection of the opposing party will be made as soon as the potential need for remote testimony is discovered.

NCR 32.1.b: When the military judge has authorized VTC testimony over the objection of one of the parties, the safeguards set forth in NCR 32.2 and 32.3 will be employed. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

Rule 32.2: The Government will ensure that all sites meet the necessary security requirements.

NCR 32.2: Two-way audio and visual transmissions shall be provided and color transmission should be used. The VTC locations must have telephonic connectivity and access to a fax machine or other means of receiving documents/written material. A VTC technician or knowledgeable support personnel will be available at both locations. The court reporter will transcribe the VTC witness's testimony in the same manner as a normal witness.

Rule 32.3: VTC sessions are open to the public at the site designated by the presiding military judge consistent with the 6th Amendment, R.C.M. 504(d) (1) and R.C.M. 804.

NCR 32.3: If counsel for both sides are not present at the site where the witness is testifying a bailiff, preferably a judge advocate, will be detailed at the witness's remote location. The remote site bailiff will identify on the record those present at the remote location and note if any spectators are present. The remote site bailiff will ensure that the VTC witness is seated far enough away from any spectators so that the spectators cannot communicate with the VTC witness. During the VTC witness's testimony, the remote site bailiff will ensure that there is no non-verbal communications between the VTC witness and any spectators. The remote site bailiff will also ensure that the VTC witness has no access to papers, exhibits, or the like while testifying unless authorized by the military judge. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

Rule 33: Findings and Instructions

Rule 33: Trial and defense counsel will make appropriate recommendations as to specific instructions for the military judge to provide to the members. Requests for special instructions, modifications to standard instructions, or a summarization of the evidence, must be submitted in writing and in a timely manner to the military judge and opposing counsel.

Rule 34: Record of Trial

Rule 34.1: A complete and accurate record of the proceedings is required to protect the rights of all parties. During the course of the trial, counsel must ensure that uncommon names, places, and things are spelled out on the record, that witnesses respond verbally, and that descriptions of size, distance, and location are clear.

Rule 34.2: At the conclusion of the trial, defense counsel will

indicate whether civilian counsel or military counsel will examine the record, who will respond to the staff judge advocate's recommendations, and who will represent the accused in post-trial matters. The accused must include such decisions in the written acknowledgement of appellate rights.

Rule 34.3: Whenever practicable, trial counsel must read and make corrections to the record of trial. Corrections by trial counsel should be initialed and dated before it is submitted to the military judge for authentication.

Rule 34.4: The trial counsel must ensure that the record of trial is prepared in a timely and accurate manner. Pursuant to R.C.M. 1103(i)(1)(B), the trial counsel must permit the defense to review the record except when unreasonable delay will result, before it is submitted to the judge for authentication.

Rule 35: Document Size

Rule 35.1: All electronic filings must be signed and filed in MS Word format. All documents and pleading filed with the court will be on white 8.5 inch by 11 inch white paper.

Rule 35.2: All motions will be filed in the form attached as attachment (3) to these rules. Line numbers will be used on all pleadings.

Rule 35.3: All pleadings filed must have one inch margins and use Courier New or Times New Roman 12 point font.

NCR 35: The substantive portions of all documents should be double spaced. Headings and signature blocks for example may be single spaced.

Rule 37: Terms of Court

NCR 37: With the availability of VTC, sites located outside the National Capital Region have immediate access to the judiciary and each case can be immediately arraigned and docketed and motions heard in accordance with the trial deadlines set by the military judge. Terms of Court (ToC) may be used as a management tool for sites located outside of the National Capital Region. Counsel should be vigilant in identifying potential windows where the casework warrants a ToC. ToC are intended to assist counsel and the Northern Circuit docketing judge for case planning in areas where military judges are not regularly present. Utilizing ToC will likely fluctuate between set terms and flexible terms as necessary based on Circuit/area caseload and

the interests of justice. Counsel should attempt to utilize both VTC and ToC. At a minimum, counsel in these locations must continually assess pending cases and remain in contact with the court about events that might affect judicial support requirements. See attachment 12.

Attachments:

- (1) Civilian Counsel Notice of Appearance
- (2) Docketing Memorandum
- (3) Motion for Docketing/Continuance
- (4) PTIR
- (5) Pretrial Order
- (6) Notice of Pleas and Forum
- (7) Certification of Withdrawal
- (8) Motion Format
- (9) Bailiff's Handbook
- (10) Member's Questionnaire
- (11) Technology Supplement
- (12) Chief Trial Judge's Terms of Court guidance